

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case 2022/005653

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes

Date: 22 April 2025

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In the matter between:

MOSSA, HASEENA

Applicant

And

THE ROAD ACCIDENT FUND

Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] The plaintiff instituted action against the Road Accident Fund ("the RAF") due to injuries sustained in a motor vehicle collision on 28 November 2020. At the time of

the collision, the plaintiff was 25 years old and employed as a data capturer at Lancet Laboratories, where she had worked since 2016.

[2] The merits of the matter were settled, with the RAF accepting 100% liability for the plaintiff's proven or agreed damages.

[3] The issues relating to past and future medical expenses were not pursued before this court due to the outstanding status of relevant vouchers. The RAF rejected the plaintiff's claim for general damages and must be referred to the Health Professions Council of South Africa ("HPCSA") for determination. Accordingly, the only issue that served before this court was the quantum of damages in respect of loss of past and future earnings.

[4] Several expert reports were admitted on affidavit, including those of Dr Read (orthopaedic surgeon), Prof Chait (plastic surgeon), Dr Marus (neurosurgeon), Ms Georgiou (occupational therapist), and Munro Forensic Actuaries. The experts called to give viva voce evidence were Mr Steven Teixeira-Ferreira (clinical psychologist) and Mr de Vlamingh (industrial psychologist). Only the plaintiff placed an actuarial calculation before the court.

[5] The central issue before this court was whether the plaintiff had suffered a loss of earning capacity and, if so, how such loss should be quantified.

Plaintiff's Evidence

[6] The plaintiff testified that she sustained multiple injuries, including lacerations requiring stitches to her left arm, swelling of the right knee, soft tissue injuries consistent with whiplash, a concussion, loss of consciousness, and temporary memory loss. She testified that she was hospitalised for two weeks following the collision.

[7] Before the accident, she had matriculated in 2013 and obtained a certificate in Business Administration in 2015. She was employed full-time at Lancet Laboratories, performing various duties, including DNA, stock control, loading results, attending to

wards, and reception work. She was considered an exemplary worker and often worked long hours, including weekends.

[8] After the accident, the plaintiff reported significant physical limitations and psychological symptoms. She testified to ongoing pain and limited mobility, stating that she no longer has physical strength and struggles with anxiety, depression, and insomnia. She described the impact on her daily life, including being unable to attend the gym, swim, or socialise with friends and family. She expressed embarrassment about the visible scarring on her body and stated that she avoids exposing those areas.

[9] The plaintiff further testified that she intended to pursue further studies but no longer feels capable. She described a loss of independence, stating that she now relies heavily on others for everyday tasks. She fears showering due to dizziness and a constant fear of falling.

[10] She was reassigned to lighter duties at work, which affected her confidence and promotional prospects. Ultimately, she resigned in August 2023, citing physical exhaustion, pain, and an inability to cope. She acknowledged receiving two written warnings and knowing her performance ratings had dropped.

[11] The plaintiff testified that she had been prescribed Xanax for anxiety and depression. When asked under cross-examination whether she had any pre-existing medical conditions related to the accident, she stated no, but she did refer to her endometriosis problems. She later added that she had undergone surgery for fibroid removal in 2016. The occupational therapist's report further recorded a subsequent bowel operation in 2021, impacting her ability to lift heavy objects.

[12] This should be contrasted with Dr Marus' report that notes that she was dealing with a lot of emotional trauma, recovering from Covid and dealing with her boyfriend's death by suicide, and that she was prescribed Xanax. The plaintiff confirmed that she had been in a relationship before the accident and that her boyfriend had taken his own life. When asked whether this had affected her, she

responded that she went through a process of grief and moved on. She insists that she had processed this traumatic event with some resilience.

[13] She further testified that she worked in a high-pressure, fast-paced environment before the collision. She maintained that she coped adequately with the demands of her position.

[14] Regarding her current medical treatment, the plaintiff testified that she had not previously taken any medication for headaches or other complaints before the accident. She also stated that after the accident, her working hours were reduced from the original 07h00-16h30 shifts, including weekends, to 07h00-15h00 on weekdays only, with no weekend work. She testified that this reduction in hours adversely affected her salary due to the loss of overtime income.

[15] Under further cross-examination, the plaintiff reiterated that she had resigned in August 2023 as she felt unable to meet her job's physical and cognitive demands. She explained that her duties required her to be on her feet, to have good coordination, and to concentrate at a high level, all of which she could no longer sustain. She testified that since her resignation, she has focused on recovering her health. She said that she cannot perform tasks unassisted and is now dependent on her mother. She also testified that she cannot drive.

[16] This last statement is inconsistent with Dr Marus' report, which recorded that she was able to drive herself but experienced anxiety when others were driving.

[17] The plaintiff also described a swollen right knee and ongoing pain. Some of her physical limitations were observable during the proceedings. Although she could stand for the duration of her evidence, her demeanour suggested some discomfort.

[18] Finally, the plaintiff testified that she is currently unemployed and has been unable to secure new work. She expressed the view that, in her current condition, she is not able to return to the workforce.

Mother's Evidence

[19] The plaintiff's mother was called as the second witness. She described the plaintiff before the accident as vibrant, outgoing, and ambitious. She regularly attended the gym, socialised frequently, and was generally a bright, determined individual, a "real go-getter," in her words.

[20] When asked about her daughter's earlier challenges, including a diagnosis of endometriosis and the death by suicide of her boyfriend, she acknowledged that these events caused temporary emotional distress. However, she maintained that the plaintiff had coped with those difficulties well. While there were periods of emotional strain and some breakdowns, the plaintiff had, in her mother's view, shown resilience and strength, and neither of these episodes appeared to have had a lasting impact on her functioning.

[21] With regard to her employment, the mother testified that the plaintiff had coped well with the demands of her job before the collision, even though the hours were long and the work demanding. She stated that her daughter had no apparent difficulties and effectively managed her role.

[22] However, following the accident, she observed a marked change. The plaintiff became anxious and withdrawn and ceased socialising with her friends. She frequently complained of headaches, general weakness, and swelling of her scars. The mother also noted a significant drop in her daughter's self-esteem. According to her, the plaintiff no longer expressed aspirations or future goals, and she had assumed a caregiving role in her daughter's daily life. She confirmed that the plaintiff experienced dizziness, particularly while showering, and described her as being in constant pain, especially in her back, and suffering from persistent headaches.

[23] When asked about the resignation from employment in 2023, the mother testified that the plaintiff had been under considerable strain. In her view, the physical pain, the work conditions, and the mental pressure became too much. Her daughter was no longer coping. She mentioned that her daughter was forgetful and feared being reprimanded. Although she tried to perform her duties as best she

could, it was clear to the mother that she was not the same person she had been before the collision.

[24] Under cross-examination, the mother reiterated that her daughter had managed the pain associated with endometriosis before the accident. She testified that the plaintiff received support from her family and used painkillers during flare-ups. This pain, she stated, did not interfere with the plaintiff's work, as it occurred cyclically and was manageable.

[25] The mother was not aware that the plaintiff had been prescribed medication either before or after the accident, although she conceded that her daughter may have taken Xanor. She believed that her daughter was emotionally strong and that she had been helping her cope with the emotional stressors in her life. She was also not aware of her daughter receiving treatment for vertigo or dizziness.

[26] The mother confirmed that her daughter had complained of ongoing back pain and knee weakness, and she expressed the view that further medical investigation was warranted. As for work-related issues, she testified that the plaintiff had received warnings, which she initially described as disciplinary hearings. However, she later corrected this to confirm that they were written warnings. She attributed these to the plaintiff's forgetfulness and errors at work. She recalled that absenteeism may also have played a role.

[27] Concerning the endometriosis and the related surgery, the mother confirmed that the operation was performed to alleviate pain, but she reiterated that the condition did not impact her daughter's work performance. According to her, work was always her daughter's priority.

Expert Evidence

Mr Teixeira-Ferreira (Clinical Psychologist)

[28] Mr Teixeira-Ferreira, a clinical psychologist, testified on behalf of the plaintiff. He explained that the plaintiff had exhibited certain pre-morbid psychological vulnerabilities which, while not disabling, were relevant to her post-accident

presentation. These included her diagnosis of polycystic ovarian syndrome (PCOS), endometriosis, and the emotional trauma associated with the death of her partner.

[29] He described her, in psychological terms, as a "vulnerable individual," though he acknowledged that she had shown resilience in navigating these difficulties before the accident. She was able to maintain her employment and function independently. He explained that whether an individual can overcome such vulnerabilities depends in part on that person's internal motivation and capacity for self-regulation.

[30] Regarding the plaintiff's post-accident condition, Mr Teixeira-Ferreira described the collision as a "watershed moment" in the plaintiff's life. While emotional well-being is fluid and context-dependent, he testified that the trauma of the accident compounded her pre-existing vulnerability.

[31] In his view, the plaintiff's current psychological challenges, including chronic pain, emotional dysfunction, reduced stress tolerance, and diminished self-esteem, are directly linked to the consequences of the collision. These impairments, he stated, have undermined her ability to perform her occupational duties and to progress professionally. He further identified her perceived loss of purpose, isolation, and inability to engage in physical activity as exacerbating factors.

[32] When asked about the possibility of recovery, Mr Teixeira-Ferreira indicated that treatment was possible but would depend on several variables. These included the plaintiff's motivation, the quality of her support system (which, in his view, was present in her mother), and a sustained, holistic approach to rehabilitation. He emphasised that any progress would be incremental and "compartmentalised" requiring physical and emotional intervention. While he remained cautiously hopeful that improvement was possible, he opined that the plaintiff was unlikely to return to her pre-accident level of functioning.

[33] In response to a question from the plaintiff's counsel regarding the key takeaway from his assessment, he reiterated that although there was a pre-existing vulnerability, the accident significantly deepened her psychological distress. He

maintained that the physical pain and emotional trauma resulting from the accident were now the primary limitations on her functional capacity. He noted, however, that the plaintiff's pre-existing bowel issues did not appear to have significantly affected her emotional well-being before the accident.

[34] Under cross-examination, Mr Teixeira-Ferreira maintained that emotional state and personal motivation are inherently fluid and cannot be quantified precisely. He resisted attempts to reduce the plaintiff's condition to a definitive prognosis or express her employability numerically. Instead, he stressed that her psychological outcome would be shaped by a range of fluctuating internal and external factors, including ongoing pain, stress exposure, and access to therapeutic support.

Mr de Vlamingh (Industrial Psychologist)

[35] Mr de Vlamingh, an industrial psychologist, testified on behalf of the plaintiff. He confirmed the plaintiff's educational background and employment history. He acknowledged her pre-existing medical conditions, including endometriosis, PCOS, and insulin resistance, but stated that these did not impair her pre-accident work functioning. She had maintained steady employment for several years, performing her duties effectively. He observed that she had ambition and had expressed a realistic desire to further her career by training as a phlebotomist. At the time of the collision, she was positioned to pursue this goal, having acquired relevant experience and shown an interest in formal qualifications.

[36] When asked what prevented her from pursuing this goal after the accident, Mr de Vlamingh testified that the plaintiff could no longer cope in the required working environment. He had accordingly excluded any upward trajectory involving phlebotomy in his post-accident projections. He confirmed that he had already taken her pre-morbid vulnerability into account in crafting her career model and had applied a conservative approach. He assumed that she would not likely have pursued tertiary studies but would nevertheless have progressed from a Paterson B1 to a B4 level. This assumption was based on her motivation, work experience, and career trajectory before the accident.

[37] Mr de Vlamingh assumed a retirement age of 65. He accepted that she would likely remain in the workforce until that age but in a reduced capacity. He testified that while her knee and arm injuries had a good prognosis, her spinal injuries were more serious and likely to persist. These injuries would impair her ability to sit or remain in static postures for extended periods and significantly impact her occupational functioning.

[38] He testified that the plaintiff's resignation in 2023 was a justifiable decision in light of her physical and emotional limitations. While she was not unemployable, she would require a modified work environment. He believes she would best be suited to a small, low-pressure company that allowed for flexible hours or remote work. With appropriate support and treatment, she could function in roles such as basic administrative work, medical reception, or bookkeeping, but not in high-stress environments. He maintained that her low-stress tolerance, combined with chronic pain and fatigue, significantly limited her vocational options.

[39] Under cross-examination, Mr de Vlamingh reiterated that the plaintiff had coped with her pre-existing vulnerabilities before the accident and remained employed despite those conditions. He described the motor vehicle accident as a "watershed moment", which exacerbated her existing fragilities and triggered significant psychological and physical decline. He conceded that he had not interviewed the plaintiff's employer, explaining that such interviews are often difficult to secure due to confidentiality concerns and employer reluctance to provide performance evaluations.

[40] He was unaware of the written warnings the plaintiff had received but had been informed of her resignation. He agreed that recovery with treatment was possible but maintained that a return to pre-accident functioning was improbable. He emphasised that her prognosis remained guarded and that although some degree of occupational reintegration might be achievable, her work would need to be less physically and emotionally demanding.

[41] Mr de Vlamingh referred to the "thin skull" principle, noting that the plaintiff's pre-existing vulnerability did not negate the accident's impact. He believes she was

functioning adequately before the collision and would likely have achieved modest but steady career growth. The accident materially altered that trajectory. His evidence supports the conclusion that while the plaintiff may not have reached the highest tiers of her professional path, the collision substantially reduced the opportunities that would otherwise have been available to her.

Legal Framework and Analysis

[42] In delictual claims for patrimonial loss, such as the present one involving past and future loss of earnings, the plaintiff must establish the existence of a diminished earning capacity due to the injuries sustained in the collision. This principle was affirmed in *Rudman v Road Accident Fund*,¹ where the court held that loss of earning capacity is a form of patrimonial loss and, once established, must be compensated even if the plaintiff remains technically employable.

[43] In *Southern Insurance Association Ltd v Bailey NO*,² it was recognised that while actuarial evidence may guide the court, the determination ultimately lies within judicial discretion. The court must consider whether the injured party's ability to compete in the open labour market has been materially impaired. That inquiry is factual and evaluative, and the court must assess whether the plaintiff is less able to secure and retain employment than before the accident.

[44] Claims for personal injury damages often present complex causation questions, particularly where a plaintiff's post-accident deficits appear to arise from the injuries sustained in the accident and a pre-existing condition or vulnerability. This is typically the case where the accident acts as a trigger or catalyst for a previously controlled condition. In such circumstances, there is a temptation to apportion liability between the accident and the underlying condition. However, as was made clear in *Minister van Veiligheid en Sekuriteit v Geldenhuys*,³ this approach confuses two distinct concepts: legal causation and the assessment of damages.

¹ 2003 (2) SA 234 (SCA).

² 1984 (1) SA 98 (A).

³ 2004 (1) SA 515 (SCA).

The fact that the plaintiff was predisposed to greater injury does not limit the defendant's liability if the accident materially exacerbated or accelerated that condition.

[45] The correct approach, rooted in the *talem qualem* rule (also known as the "thin skull" principle), is that the wrongdoer must take the victim as they find them.⁴ Where the collision results in more significant harm to the plaintiff than might be suffered by a person of average robustness, the defendant is nevertheless liable for the full extent of that harm. The question is not whether the condition might have progressed on its own, but whether the accident materially contributed to the plaintiff's current state. If so, full liability follows.⁵

[46] Where there is uncertainty as to whether the post-accident deficits result from the accident or a pre-existing condition, this becomes a question of fact. The burden rests on the plaintiff to prove, on a balance of probabilities, that the sequelae complained of are causally linked to the injuries sustained in the motor vehicle collision. Once that onus is discharged, the plaintiff is entitled to recover such damages as they can prove. In this regard, South African courts apply what has become known as the "common-sense approach" to causation, as articulated in *Minister of Police v Skosana*⁶ and subsequent authorities. In practical terms, this approach asks whether the facts support a causal link based not on scientific precision but on how an ordinary person, equipped with everyday experience, would reason about cause and effect.

[47] The psychological impact of the collision on the plaintiff is not merely incidental but central to determining damages. Mr Teixeira-Ferreira confirmed that while the plaintiff presented with certain pre-morbid vulnerabilities, including PCOS, endometriosis, and bereavement, these had not disrupted her occupational functioning before the accident. He described the accident as a "watershed moment", which destabilised her psychologically, resulting in low mood, cognitive

⁴ Klopper *Law of Third Party Compensation* 4ed page 140. *Griffiths v Mutual and Federal* 1994 (1) SA 535 (A).

⁵ Klopper *Law of Third Party Compensation* 4ed page 140.

⁶ 1977 (1) SA 31 (A).

fatigue, and social withdrawal. This evidence is not contested by other expert evidence.

[48] What emerges from the testimonies of the experts and the plaintiff herself is that she is not completely incapacitated but rather less emotionally resilient. The plaintiff has insight into her condition and receives support from her mother. However, her prognosis remains guarded. While psychological rehabilitation may lead to improvement, the likelihood of her returning to pre-accident functioning, while not impossible, is not a given. She is no longer competitively placed in the open labour market and would require a tailored, low-stress environment to re-enter the workforce. This diminished capacity, although not absolute, justifies a conservative approach to post-accident earnings, as set out by the industrial psychologist.

[49] In assessing contingencies, the court is also mindful that while the plaintiff and her mother consistently described her as emotionally strong and high-functioning before the accident, the documentary and expert evidence painted a more complex picture. The clinical psychologist confirmed that she was already in treatment for emotional trauma before the accident and that she presented with a degree of psychological vulnerability. The court accepts that she was functioning well in her work environment but finds that her resilience was perhaps not as robust as portrayed. This justifies a slightly higher pre-accident contingency than might otherwise have been applied and affirms that the accident triggered a decline.

[50] Therefore, the accident's impact on this plaintiff must be assessed not by reference to a hypothetical person of average robustness but by reference to her actual psychological and physical profile. Her pre-existing vulnerabilities do not reduce the RAF's liability, and the accident exacerbated those vulnerabilities, as the evidence demonstrated.

[51] The court accepts the submissions of the plaintiff's counsel that her subsequent resignation from employment, while perhaps not strictly necessary, was informed by the sequelae of the accident. The plaintiff is, therefore, entitled to be compensated not for what she might have become in idealised circumstances but for

the realistic career trajectory she has lost having regard to her actual condition both before and after the incident.

Quantification

Past loss

[52] The plaintiff's past loss of earnings is calculated as the difference between what she would have earned, but for the accident, and what she earned. In the uninjured scenario, she would have earned R818 400. She earned R416 100. As no contingency deduction is applicable to actual earnings, the plaintiff is awarded a direct loss of R402 300 in respect of past income.

[53] With regard to future loss of earnings, the plaintiff's actuary projected that, had she remained uninjured and progressed to a Paterson B4 level, the present value of her income would total R6 739 400. A 35% contingency is applied to this figure to reflect the long future working horizon (35 years) and to account for uncertainties, including the possibility that she may not have ultimately reached B4 level. This results in a discounted, uninjured future income of R4 380 610.

[54] The injured scenario projects her post-accident income as R3 862 500. Given her functional limitations, the court accepts this as a conservative representation of her likely future earnings. Because this is a conservative estimate, and her injuries do not appear to preclude her from attaining this minimum level, a contingency of 15% is applied. This yields an injured future income of R3 283 125.

[55] Therefore, the plaintiff's future loss is calculated as R4 380 610 (uninjured) minus R3 283 125 (injured), resulting in a net future loss of R1 097 485.

[56] The total proven loss of income amounts to R1 336 105.

Order

[57] The following order is made:

1. The defendant shall compensate the plaintiff for 100% of the plaintiff's agreed or proven damages arising from the collision on 28 November 2020.
2. The defendant shall pay to the plaintiff:
 - a. The capital amount of R1 336 105 (one million, three hundred and thirty-six thousand, one hundred and five rand) ("the capital sum") calculated as past and future loss earnings within 180 days of this order ("the payment date").
 - b. Interest at the rate of 11,25% per annum on the capital sum calculated from the payment date to the date of final payment in the event of the defendant failing to pay the capital sum by the payment date;
 - c. The plaintiff's taxed or agreed on party and party costs, which costs will include the following:
 - i.the costs attendant upon the preparation of reports and/or addendum reports and/or forms and affidavits, if any, of:
 1. Dr Read, the Orthopaedic Surgeon;
 2. Prof Chait, Plastic Surgeon;
 3. Dr Marus, Neurosurgeon;
 4. Mr Teixeira-Ferreira, Clinical Psychologist;
 5. Dr Hough, ENT;
 6. Ms Georgiou, Occupational Therapist;
 7. Mr De Vlamingh, Industrial Psychologist;
 8. Munro Forensic Actuaries, Actuary;
 - ii.the reservation, consultation, preparation and attendance fees of:
 1. Mr Teixeira-Ferreira, Clinical Psychologist (15 and 16 April 2025);
 2. Mr De Vlamingh, Industrial Psychologist (15 and 16 April 2025);
 3. Ms Dlamini, Occupational Therapist (15 April 2025);
 - iii.the costs of counsel, which costs to be taxed on scale B.
 - iv.the costs incurred by the plaintiff in respect of the consultations in preparation for trial and the attendance of all medico-legal examinations (which includes accommodation and travel expenses if applicable);
 - v.the costs in respect of the preparation and perusal of the bundles used for trial purposes and the uploading thereof to CaseLines;
 - d. Subject thereto the plaintiff shall:

- i. serve the notice of taxation on the defendant's attorneys of record in the event that such costs are not agreed;
 - ii. allow the Defendant 180 days to make a full payment of the taxed costs;
 - iii. failing which interest will be payable at the rate of 11.25% from the date of taxation by electronic fund transfer into Wim Krynauw Attorneys Trust Account (account number 4[...]) maintained at ABSA Bank (ref: T[...])
3. The defendant shall furnish an undertaking as envisaged in Section 17(4)(a) of the Road Accident Fund Act, No. 56 of 1996, as amended, to the effect that the defendant shall compensate the plaintiff in respect of 100% of:
- a. the costs of the future accommodation of the plaintiff in a hospital;
 - b. the treatment of the plaintiff;
 - c. the rendering of a service to the plaintiff, and
 - d. the supplying of goods to the plaintiff, after such costs have been incurred and on proof thereof arising from injuries sustained by the plaintiff, which forms the subject matter of this action.
4. The determination of the plaintiff's claim for Past Medical and Hospital Expenses and General Damages is separated from all other heads of damages in terms of Rule 33(4) and postponed sine die.
5. The plaintiff's entitlement to claim General Damages is referred to the HPCSA for determination.
6. There is a valid contingency fee agreement between the plaintiff and her attorneys of record.

WJ du Plessis

Judge of the High Court

Gauteng Division, Johannesburg

Date of hearing: 15 & 16 April 2025

Date of judgment: 22 April 2025

For the applicant: PS Oberholzer instructed by Wim Krynauw Inc

For the respondent:

E Mdlovu instructed by the State Attorney
Johannesburg